

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
CORVIN COMPANY BUILDERS,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 124

FINDINGS OF FACT,
CONCLUSION AND ORDER

This is an appeal by Corvin Company Builders from a civil penalty of \$250.00 (Notice of Civil Penalty No. 255) imposed by the Puget Sound Air Pollution Control Agency, based on Notice of Violation No. 5431.

It came on for a formal hearing on September 20, 1972 before all members of the Board in the Board's hearing room, 311 Insurance Building, Olympia, Washington, with Mr. James T. Sheehy presiding.

The appellant, Mr. A. J. Corvin II, was present in person and represented himself; the respondent, Puget Sound Air Pollution Control Agency, was represented by its counsel, Keith D. McGoffin of Burkey,

Marsico, Roval & McGoffin. Mrs. Elinor A. Holloway reported the proceedings.

As is customary in civil penalty appeals, the respondent presented its case first. Two witnesses were sworn and testified, and Respondent's Exhibits A to G were admitted.

The appellant was sworn and testified, and he also questioned Keith D. McGoffin, attorney for the respondent.

On the basis of testimony heard and exhibits examined, the Pollution Control Hearings Board prepared Proposed Findings of Fact, Conclusion and Order which were submitted to the appellant and respondent on November 13, 1972. No objections or exceptions to the Proposed Findings, Conclusion and Order having been received, the Pollution Control Hearings Board makes and enters the following:

FINDINGS OF FACT

I.

At about 7:45 a.m., April 20, 1972, a fire was started at approximately 14117 South 151st Street East in Tacoma, Washington by an unnamed employee of the appellant, at the direction of another employee, Virgil G. Steele, who was in charge. The substance being burned was about ten to twelve feet in diameter, and stood about two and a half to three feet in height, and consisted of construction debris including two by fours, lumber scraps, plastic sheeting, black building lining paper, etc.

II.

This fire was in violation of Section 9.02(b) of Regulation I of the respondent as amended by Resolution No. 141 prohibiting outdoor

FINDINGS OF FACT,
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fires not specifically permitted, and was in a restricted area with a general population density of 2,000 or more persons per square mile.

III.

The fire was extinguished by the appellant's employees, at the direction of Arnold E. Brannock, a supervising inspector of the Puget Sound Air Pollution Control Agency, who issued a Notice of Violation No. 5431, and delivered it to Mr. Steele, thereafter a civil penalty of \$250.00 (Notice No. 255) was imposed by the Puget Sound Air Pollution Control Agency, and it is from that penalty that this appeal is taken. The unconsumed construction debris was later removed from the premises by a dumpster.

IV.

It is the position of the appellant that his employees violated his instructions, and that he had already ordered a dumpster to remove the building construction debris. Neither of the employees involved were presented as a witness.

CONCLUSION

It is conceded that there was a violation as charged and that the appellant's employees were responsible for that violation. The issue raised is whether the appellant was responsible for the unlawful acts of his employees. We conclude that under such circumstances an employer is responsible for the actions of his employees and that a civil penalty was properly imposed by the respondent, and the time, place and circumstances do not warrant any mitigation of the penalty imposed.

Based on the foregoing Findings of Fact and Conclusion, the Pollution Control Hearings Board enters the following

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CONCLUSION AND ORDER

ORDER

That the civil penalty of \$250.00 imposed upon the appellant by the respondent should be and is affirmed.

DONE at Olympia, Washington this 6th day of February, 1973.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

W. A. GISSBERG, Member

James T. Sheehy
JAMES T. SHEEHY, Member

FINDINGS OF FACT,
CONCLUSION AND ORDER